STATEMENT ON BEHALF OF THE
AMERICAN BAR ASSOCIATION

Submitted to the
Defending Childhood Task Force on Children Exposed to Violence
U.S. Department of Justice

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I am Thomas M. Susman, Director of Governmental Affairs for the American Bar Association. I am submitting this statement is on behalf of the ABA to the U.S. Department of Justice Task Force on Children Exposed to Violence for its consideration. The ABA is the world’s largest voluntary professional organization, with a membership of almost 400,000 lawyers (including a broad cross-section of prosecuting attorneys and criminal defense counsel), judges, and law students. The ABA continuously works to improve the American system of justice and to advance the rule of law worldwide. Through its many entities and programs, we have long been concerned with the victimization of young people and how lawyers, the courts, and our framework of laws can better protect them from the trauma of violence and its aftermath. The ABA believes that the legal profession has a critical role to play in
preventing and responding to the violence that children experience as victims and witnesses, and Association work has reflected that concern in the adoption of many policy resolutions that address these issues and in its projects and programs.

In 2010 the ABA completed a project, supported by the Department of Justice's (DOJ) Office for Victims of Crime (OVC), entitled “Enhancing Legal Professionals’ Response to Victims of Child Abuse”. Under the auspices of the ABA Criminal Justice Section, in partnership with the ABA Center on Children and the Law, this project convened a group of expert advisors to examine how the ABA could better support the rights of child crime victims. Presentations on how lawyers could better aid child crime victims were made at several key conferences, were the basis for articles on child victims and witnesses developed for ABA publications and materials for defense lawyers, prosecutors, and judges intended to improve the treatment of child victims by the criminal justice system. The project also held a continuing legal education training, “How to Effectively Represent Child Victims in Criminal Cases.”

In 2009, a policy resolution developed by the project was submitted to, and approved by, the ABA House of Delegates. We commend the policy’s recommendations to the Task Force. The policy urges that all child victims of criminal conduct have prompt access to legal advice and counsel and to specialized services and protections such as those provided by child advocacy centers. It also urges support of legislation, or the modification of rules of court, to provide that child victims of criminal conduct have independent attorneys who can assist them in accessing applicable victims’ rights and
age-appropriate accommodations. It further calls upon state and local bar associations, law schools, victim rights organizations, child rights organizations, and courts to collaborate on development of appointment procedures for courts to appoint attorneys for child victims of criminal conduct and to adopt standards of practice and training requirements for those attorneys. Finally, it recommends pilot programs or demonstration projects in which rights and protections for the child victim of criminal conduct are protected and enforced through the assistance of court-appointed lawyers or lawyer/guardians ad litem for child victims.

The ABA urges the Department of Justice to gather information and conduct other research on the use of independent lawyers or lawyer/guardians ad litem for child victims of, and witnesses to, crime. We further advocate support for demonstration projects that would, in federal, tribal, and state courts, have judges appoint independent legal representation for these children, with a careful evaluation of the impact such advice and counsel has on these children and their cases.

A range of ABA entities have been addressing child victimization issues, in addition to the OVC project described above. What follows are examples, with recommendations on how the Task Force and DOJ might further support relevant activities.

- The Center on Children and the Law is working with the DOJ-funded Safe Start Center and Child and Family Policy Associates on a tool, with accompanying material, to help court-appointed lawyers and other advocates identify children’s polyvictimization and trauma. The instrument is tentatively titled Identifying
Polyvictimization Among Court-Involved Children and Youth: A Tool for Attorneys and Other Court Appointed Advocates, and there will be an accompanying Resource Guide.

The ABA hopes, with DOJ and other support, to use this material in training lawyers and others across the country to enhance trauma-informed legal and judicial practice, in both juvenile dependency and delinquency cases.

- The Center is working with the Protection Project of Johns Hopkins University and the International Centre for Missing and Exploited Children on their development of a global “Child Protection Model Law” that includes a chapter on “Protection of Children in the Justice System” that is based on a set of U.N.-approved Guidelines on Justice for Child Victims and Witnesses of Crime, which the Center helped draft. The Task Force should consider recommending development of similar model guidelines for state justice systems.

- The Center also is participating in a project, sponsored by the National Center for Victims of Crime, entitled Bridging the Systems: Child Welfare, Trafficking, and Law Enforcement Working Together for Trafficked Children and in 2011 helped develop an ABA policy on aiding child trafficking victims. We believe that prostituted children are an especially vulnerable group, and we urge the Task Force to recommend that DOJ provide guidance to federal and state law enforcement agencies and prosecutors on “best approaches” to assure that these children are treated sensitively as victims, not as offenders. Since many of these victims are foreign nationals, we also encourage the Task Force to recommend that special attention be paid to how the justice system can better protect non-citizen child trafficking victims.
In 2006, then ABA President Karen Mathis created the ABA Commission on Youth at Risk to serve as a multi-disciplinary focal point within the Association on issues related to vulnerable youth. With members appointed annually by the ABA President, this Commission has been the lead in developing over twenty child and youth related policies approved by the Association’s House of Delegates. It also has convened roundtables on youth at risk issues across the country. Since its inception, the Commission has had a liaison from DOJ, through its Office of Juvenile Justice and Delinquency Prevention, and we hope the Task Force will recognize the importance of continuing and strengthening that relationship.

Given the importance of sensitive attorney questioning of child victims of crime, the Litigation Section’s Children’s Rights Litigation Committee has held a series of related teleconferences, including Counseling Children and Youth in Times of Crisis: Tips to Achieve Success and Avoid Pitfalls, and developed training materials and a video on Interviewing the Child Client: Approaches and Techniques for a Successful Interview, a video that is now available in its entirety on YouTube at: http://apps.americanbar.org/litigation/committees/childrights/video/1006-interviewing-child-client.html. Related to this, the ABA Center on Children and the Law is currently developing and seeking support for a revised third edition of its Handbook on Questioning Children: A Linguistic Perspective. This has been the Center’s best-selling publication over its 33-year history. These successful programs reflect the importance of the issues. We urge the Task Force and DOJ to continue to support efforts to improve how lawyers and judges talk to child victims and witnesses, so as to reduce trauma while gathering necessary factual information.
In addition to its recent OVC project, the ABA Criminal Justice Section has, since the 1980’s, examined how prosecutors and defense attorneys should deal with child victim/witnesses in court. That work led to the *ABA Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged* (1985 Guidelines). In 2001 the Section convened a task force to undertake a retrospective review of child witness developments reflected in court decisions, as well as legislation and policies, and it issued a 2002 publication with key statutory and caselaw references, *The Child Witness in Criminal Cases*. Now, a decade later, it is time to examine the impact of the reforms first urged in the 1980s on the prosecution and defense bar, and the criminal courts, and we hope the Task Force will recommend a new study on this topic.

Since 1992, DOJ’s Bureau of Justice Assistance has provided grants that support courts, child advocacy centers, and prosecutors’ offices in the purchase of equipment for recording forensic interview and allowing alternative forms of trial testimony by young children in child abuse cases. The ABA Center on Children and the Law administered this program until this year. Over the period of the ABA’s involvement, through its *Using Closed-Circuit TV and Digital Recording Equipment to Reduce Trauma in Child Abuse Victims in the Criminal Justice Process Project*, more than $1.9 million has been awarded to 50 grantees, representing communities in almost every state. This relatively small federal program ($1 million per year) has resulted in hundreds of child victims’ voices being heard, in ways that protect both the child victims from further trauma and defendants’ rights to face their accusers (see: [www.americanbar.org/groups/child_law/projects-initiatives/cctv.html](http://www.americanbar.org/groups/child_law/projects-initiatives/cctv.html) for highlights of the 20 years of ABA involvement). We urge the Task Force to recommend to DOJ and
Congress that the program be reauthorized to assure that these reforms continue to help protect child abuse victims.

An ABA Center on Children and the Law attorney serves on the National Child Traumatic Stress Network’s (NCTSN) Justice System Consortium. The Consortium is comprised of mental health, child welfare, and legal professionals with expertise in the field of child traumatic stress. As part of this effort, the Center is working with NCTSN to develop a handbook for judges on how to make their courtrooms more trauma-informed, a fact sheet for judges and attorneys on the effects of trauma on birth parents involved in the child welfare system, and guidance for mental health professionals called to testify in court on behalf of their clients. When these are completed, we hope the Task Force recommends that DOJ support the dissemination and utilization of these resources.

In conclusion, the legal profession through the American Bar Association as its national representative recognizes its important role in helping to prevent exposure of children to violence, in responding to perpetrators of violence against children, and in ameliorating the effects of violence on all children including those involved in the justice system. As the attached summary of our policies indicate, the Association has also addressed violence impacting children arising in regards to firearms purchase, homes with domestic violence, teen dating violence, school violence prevention, bullying and youth-on-youth sexual abuse and physical harassment, mental health services, the use of multi-disciplinary teams, and (since 1978) the improvement of the legal/judicial system related to child victims of abuse and neglect.
Thank you for the opportunity to share our views with the Task Force.

We welcome the opportunity to work with the Task Force, and the Department of Justice more broadly, on helping children who are at-risk of being or who have been victimized, to be protected, to be healed, and to thrive.
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PREVENTING EXPOSURE

- Expand the list of persons prohibited from receiving or possessing firearms to include persons convicted of child abuse (1994AM, #10E)
- Require courts to consider the safety risks to children of domestic violence victims when drafting orders containing visitation and visitation exchange programs (2000AM, #109)
- Support adolescent dating awareness programs, adolescent victim services, and teen offender intervention programs (2000AM, #111)
- Encourage governments to adopt legislation promoting school violence prevention education, instruction, awareness training and programs for children, parents, teachers and school administrators, and lawyers to support school violence prevention education to prevent violent acts by children through encouraging smart decisions and timely, appropriate resolution of conflict (2004 MY, #109).
- Support law enforcement policies and procedures that protect victims of domestic violence and their children (2005AM, #114)
- Urges federal, state, territorial, and local officials, to prevent and remediate the existence and dangers of bullying, including cyberbullying and youth-to-youth sexual and physical harassment (2011MY, #107A)
- Mandate reporting of suspicion of trafficking in minors (2011AM, #103A)

RESPONDING TO PERPETRATORS OF VIOLENCE AGAINST CHILDREN

- Have sufficiently lengthy statutes of limitation to allow prosecution of offenders whose offenses come to light significantly after they are committed due to restored memory of victims or willingness to report (1985 Guidelines)

AMELIORATING EFFECTS OF VIOLENCE, GENERALLY

- Make compensation available to child victims, including child victims of human trafficking (1993MY, #107B; 2011AM, #103A)
- Promote multidisciplinary domestic violence programs that emphasize safety of victims and their children (1995AM, #126)
- Encourage domestic violence statutes that include the same remedies, protections, and services to adolescents that are available to adults, including restraining orders; access to shelters and safe houses; support groups, education, and counseling (2000AM #111)
• Provide prompt health, mental health, substance abuse treatment, educational and vocational training, residential care, and other services to child victims of trafficking (2011AM #103A)

• Community mental health systems serving youth should be reinvigorated and significantly expanded to provide greater access to troubled youth and their caretakers, with stronger support for expanding availability of evidence-based programs (2006AM, #10A)

**AMELIORATING EFFECTS OF VIOLENCE IN THE JUSTICE SYSTEM**

• Use multi-disciplinary teams involving the prosecutor, police, and social services resource personnel in investigating and prosecuting child abuse to reduce the number of times the child must reiterate case circumstances; (1985 Guidelines)

• Ensure speedy trial to reduce time a child must be involved in the criminal justice process (1985 Guidelines)

• Modify court procedures/protocols to accommodate the needs of child witnesses with respect to, e.g., competency evaluations, location and logistics of testimony, leading questions and reliable hearsay, (1985 Guidelines)

• Encourage support for, and implementation of, guidelines to improve the child abuse and neglect court process (1995AM, #116B)

• Ensure that multidisciplinary domestic violence programs provide enhanced legal representation for children of domestic violence victims and that their policies, procedures and practices place primary emphasis on the safety of the victim and the victim’s children. (1995AM, #126)

• Support NCCUSL Uniform Child Witness Testimony by Alternative Methods Act (2003 MY, #113C)

• Provide emergency assistance and the prompt appointment of guardians ad litem for child victims of trafficking (2007AM, #110C)

• Provide prompt access to legal advice and counsel for child victims of criminal conduct and standards of practice and training requirements for attorneys appointed to represent child victims (2009AM, #101D)

• Support pilot programs or demonstration projects protecting and enforcing rights and protections for child victims (2009AM, #101D)